IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2684 OF 1998

Ajanta Pharma Ltd. ...Plaintiffs

vs.

Brahm Laboratories Ltd. & Ors. ...Defendants

Ms Deepa Chavan with Mr.Vinay Bhate i/b M/s.Little & Co.for the Plaintiffs
Mr.R.Shroff with Ms Swati Deshpande i/b M/s.Bodhanwalla & Co. for Defendant No.2
Mr.N.M.Shah for Defendant No.4

CORAM: A.S.OKA,J.
DATE : AUGUST 13,2007

JUDGMENT:

1. This suit is kept under the caption of 'Undefended suits for exparte decree'. The learned counsel for the plaintiffs has tendered on record an affidavit of evidence of Shri Nilesh Surve, Executive Legal of the Plaintiffs abovenamed. The said affidavit is taken on record and marked 'X' for identification.

2. The plaintiffs have also filed an affidavit of documents of Shri Nilesh surve. The said affidavit is taken on record and marked 'Y' for identification. The Plaintiffs have filed five documents alongwith a list. The list alongwith the documents is taken on record and marked 'Z' (collectively).

3. According to the case of the plaintiffs, the first

defendant is a limited company carrying on business of manufacture of bulk drugs. The second defendant is a bank. The third defendant is also a bank. The fourth defendant company is providing cargo management services.

4. On 31st March 1998, the plaintiffs placed an order with the first defendant for purchase of 10,000 kgs.of 'Amoxycillin Trihydrate BP 93 Compacted (BD 0.76 to 0.78)' (hereinafter referred to as the said goods) for the price of Rs.1,66,50,000/-. The delivery was to be effected in two batches of 5,000 kgs. each on 12th April 1998 and 22nd April 1998. On 22nd April 1998, the first defendant forwarded a fax message of their proforma invoice confirming the purchase order. It is stated that the proforma invoice was inadvertently dated 31st December 1997.

5. On the request made by the plaintiffs to the third defendant, the said defendant issued an Irrevocable Documentary Letter of Credit dated 3rd April 1998 in favour of first defendant for Rs.1,71,28,912/-. The expiry date of said letter of credit was 22nd April 1998 for shipment and 5th May 1998 for negotiation. The said letter of credit was available by negotiating drafts at 90 days from the dispatch drawn for 100% invoice value on third defendant accompanied by various documents evidencing despatch of the said goods.

6. According to the case of the plaintiffs on 14th April 1998, the first defendant forwarded to the plaintiffs certificates of analysis, packing lists/ weight lists, and requisite forms in respect of 3000 kgs of the said goods. Between 17th April 1998 to 22nd April 1998, the terms and conditions of the said letter of credit were amended on three occasions. The amendments are set out in the plaint. By the last amendment expiry dates of the letter of credit were extended.

7. There was a joint meeting on 28th April 1998 when it was agreed that the contracted quality would be 6000 kgs. instead of 10,000 kgs. which will be supplied by the first defendant to the plaintiffs in two instalments as the first defendant expressed his inability to supply as per the requirement of the plaintiffs. On the basis of the said understanding, there were two amendments effected to the letter of credit for the purpose of amending the quantity and value and for extending the expiry date to 10th May 1998 for shipment and 25th May 1998 for negotiation.

8. According to the case of the plaintiffs, on 16th May 1998 they were shocked to learn that the third defendant had received the documents negotiated with the said letter of credit by the first defendant which, inter alia, contained lorry receipts dated 14th April 1998, 15th April 1998 and 16th

April 1998. The plaintiffs learnt that upto 28th April 1998 the first Defendant had not dispatched the goods. The plaintiffs by letter dated 16th May 1998 requested the third defendant to return the bills drawn under the said letter of credit on account of non acceptance. On telephonic enquiry made with the fourth defendant, the said defendant sent two fax message which showed that the aforesaid lorry receipts were not genuine.

9. The plaintiffs vide letter dated 25th May 1998 informed the third defendant about the step taken and requested to ascertain the status of the consignment covered in the said lorry receipts. The plaintiffs also informed that the said goods had not been dispatched to them by the first defendant. It was pointed out that the lorry receipts were fraudulently issued. The fourth defendant forwarded to the plaintiffs, a letter dated 25th May 1998 addressed by the first defendant wherein the first defendant categorically stated that the material covered under the said lorry receipts was taken back by the first defendant in a good order and condition and in fact the first defendant indemnified the fourth Defendant for any loss which may be suffered out of the said lorry receipts. In the said letter the first defendant also recorded that the entire amount relating to the said consignment covered under the said lorry receipts would be deposited with the second defendant and the original lorry receipts would taken from the

third defendant and handed over to the fourth defendant. The fourth defendant also forwarded a copy of letter dated 25th May 1998 addressed by the first defendant to the second defendant. In the said letter the first defendant stated that the consignment was stopped and was sold to a third party at a higher rate.

10. On 28th May 1998, the plaintiffs under the cover of their letter forwarded the aforesaid two letters to the third Defendant and stated that the first defendant had frustrated the contract of the said letter of credit and requested the third defendant to release its lien on the margin money of Rs.21,00,000/-. On 5th June 1998, the plaintiffs informed the third defendant that they were unable to accept the documents under the terms of credit as the invoice value exceeded the value of the letter of credit. By reply dated 8th June 1998, the third defendant informed the plaintiffs that the grounds for non acceptance of documents had come as an afterthought after initially returning the documents stating non receipt of the goods as the reason for the return of documents. In the meanwhile, the fourth defendant lodged two complaints with the concerned police station in Punjab wherein it was stated that the lorry receipts have been stolen by the representative of the first defendant in collusion with a staff member of the fourth defendant. It is stated in the plaint that the first defendant had obtained the said lorry receipts and had lodged

said lorry receipts along with the documents with the second Defendant and negotiated the documents under the said letter of credit with the second defendant. Thus, the first defendant negotiated the documents under the letter of credit though no goods were dispatched under the lorry receipts. Later on the plaintiffs forwarded a copy of the said complaint to the third defendants. However, third defendant by letter dated 11th June 1998 came out with a case that the plaintiffs' liability under the said Letter of credit did not extinguish. It is stated that the plaintiffs are given to understand that the second defendant has now made a demand on the third defendant for payment under the said letter of credit.

11. It is stated that the plaintiffs suffered heavy loss on account of failure of the defendants to supply the goods. It is stated that the plaintiffs were forced to purchase the goods from other suppliers at higher price at the rate of Rs.2015/- per kg. It is stated that the plaintiff is entitled to difference between the contract price and the market value which is quantified at Rs.350/- per kg. According to the case of the plaintiffs they have paid charges of Rs.1,02,774/- to the third defendant for opening the said letter of credit in favour of the first defendant. It is stated that the plaintiffs had lost interest on the amount of Rs.54,370/- which is given as a margin money to the third defendant for opening the letter of credit. The plaintiffs claimed interest

at the rate of 24% p.a. on the said amount. The prayer in the suit is for declaration that the demand of first and second defendants for payment under the said letter of credit is illegal and null and void and the third defendant is not liable to pay any amount under the said letter of credit and the said letter of credit is not binding on the third defendant or anyone else. A prayer is also made for perpetual injunction against the first and second defendant as well as the third defendant and for a money decree against the first defendant.

12. The fourth defendant has filed the written statement contesting the suit. As against the other defendants the suit has been transferred to the list of undefended suits.

13. The plaintiffs have produced on record copies of the purchase orders and proforma invoices and letter of credit as well as copies of the five amendments to the letter of credit. The plaintiffs have placed on record copies of other documents relied upon in the plaint.

14. The claim of the plaintiffs has been duly proved by the said affidavit of Shri Nilesh Surve and the documents on which reliance is placed are also proved in evidence. The plaintiffs have proved their claim as against the first to third defendants. The first Defendant did not dispatch the

goods and negotiated the documents on the basis of the lorry receipts which were fraudulently obtained. Therefore, the Plaintiffs are entitled to a money decree against the first Defendant as well as injunction as prayed. The plaintiffs have claimed further interest at the rate of 24% p.a. from the date of suit till payment or realization. Though there was no specific agreement as regards payment of interest, the suit claim arises out of a commercial transaction and therefore, considering the facts and circumstances of the case, interest will have to be granted at the rate of 12% p.a. On the perusal of the prayers made, it is clear that no relief has been claimed as against the fourth defendant.

15. Hence, I pass the following order :

i) The suit is decreed in terms of prayer clauses (a) to (h) with a modification that interest payable will be at the rate of 12% p.a. from the date of institution of the suit till realization or payment. The plaintiffs will be entitled to costs of the suit from the first defendant. It is made clear that the suit stands dismissed as against the fourth defendant.

ii) The plaintiffs will be entitled to refund of court fees, if any, as per the rules. Certified copy is expedited.

iii) It is made clear that notwithstanding the decree, all contentions of the second defendant against the third defendant and all the remedies of the second and third defendants against the first Defendant are expressly kept open.

JUDGE